

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

RUBEN PLASCENCIA,

Plaintiff,

v.

KIRK HILLMAN and
HEARTLAND EXPRESS, INC.

Defendants.

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Cause No. 3:19-cv-00040

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Comes now Heartland Express, Inc. (hereinafter referred to as “Defendant”) and hereby files this, its Notice of Removal pursuant to 28 U.S.C. §§ 1332 and 1446. In support thereof, Defendant respectfully show as follows:

I. THE STATE COURT ACTION AT ISSUE.

1. On or about December 4, 2018, a civil action was commenced in the 168th Judicial District Court of El Paso County, Texas, by the filing of an original petition bearing the caption: *Ruben Plascencia v. Kirk Hillman and Heartland Express, Inc.*, Cause No.: 2018DCV4568 (hereinafter referred to as the “State Court Action”). As of the date of the filing of this notice of removal, the following pleadings and/or documents are contained in the State Court Action: **1.** Plaintiff’s Original Petition, **2.** Citation for Heartland Express, Inc., and **3.** Citation for Kirk Hillman, **4.** Plaintiff’s Request for Admissions to Heartland Express, Inc., **5.** Plaintiff’s First of Interrogatories and Privilege Log to Heartland Express, Inc., **6.** Plaintiff’s First Set of Request for Production and Privilege Log to Heartland Express, Inc., **7.** Notice of Intention to Take Deposition to Heartland Express, Inc., **8.** Civil Case Information Sheet, **9.** Executed certificate of delivery for

Heartland Express, Inc., **10.** Certificate of delivery for Kirk Hillman, **11.** Notice of Intention to take Deposition of Kirk Hillman, **12.** Plaintiff's Request for Admissions to Kirk Hillman, **13.** Plaintiff's First set of Interrogatories and Privilege Log to Kirk Hillman, and **14.** Plaintiff's First Set of Request for Production and Privilege Log to Kirk Hillman. *See* Ex. A, Certified Copies of State Court Action Pleadings. Said attached exhibits constitute all known process, pleadings, and notices contained in the State Court Action.

2. The State Court Action is a personal injury suit involving an alleged motor vehicle accident ("the Subject Accident") that occurred in El Paso County, Texas on or about July 3, 2018. *See* Ex. A, Plt. Orig. Pet., Part IV (Pg. 2).

3. The plaintiff in the State Court Action is Ruben Plascencia in his individual capacity (hereinafter referred to as "Plaintiff"). *Id.* Based on information from Plaintiff's Original Petition, Plaintiff is a resident of El Paso County, Texas and is a citizen of the State of Texas. *See* Ex. A, Ex. A, Plt. Orig. Pet., Part II (Pg. 1). The police report documenting the Subject Accident documents Plaintiff's residential address at 13430 Emerald Bay, Horizon City, Texas 79928. Based on this information, at the time the State Court Action was commenced, Plaintiff was a resident of the State of Texas and a citizen of the State of Texas. *See* Ex. B, Pol. Rpt., Pg. 3.

4. Defendant, Heartland Express, Inc. ("Defendant"), is a Nevada corporation with its principal place of business at 901 N. Kansas Ave., North Liberty, Iowa 52317. Under 28 U.S.C. § 1332(c)(1), Defendant is a citizen of the State of Nevada and a citizen of the State of Iowa. Defendant is the parent company of the proper party-defendant, Heartland Express, Inc. of Iowa. Heartland Express, Inc. of Iowa is a wholly owned subsidiary of Defendant. Heartland Express, Inc. of Iowa was not named as a party-defendant by the Plaintiff in the State Court Action. Heartland Express, Inc. of Iowa is an Iowa corporation with its principle place of business at 901

N. Kansas Ave., North Liberty, Iowa 52317. Heartland Express, Inc. of Iowa is a citizen of the State of Iowa, and its later substitution for Defendant will not affect this Court's jurisdiction over this action based on diversity of citizenship.

5. Defendant, Kirk Hillman (hereinafter referred to as "Hillman"), is a resident and a citizen of the State of Arizona. Hillman resides at 2400 N. Bullard Ave., #1087, Goodyear, Arizona 85395. *See* Ex. B, Pol. Rpt., Pg. 1. Hillman does not join in the instant Notice of Removal because as of the date of the filing of the instant Notice of Removal, Hillman has not been served with process in the State Court Action and thus he is not required to join in the instant Notice of Removal. *See* 28 U.S.C. § 1446(b)(2)(A); *see also Getty Oil Corp. v. Ins. Co. of N. Am.*, 841 F.2d 1254, 1262 n.9 (5th Cir. 1988) *citing Pullman v. Jenkins*, 305 U.S. 534, 59 S. Ct. 347, 83 L. Ed. 334 (1939); *see also Jones v. Houston Indep. School Dist.*, 979 F.2d 1004, 1007 (5th Cir. 1992). Hillman is not a resident or citizen of the State of Texas because Hillman is a resident and citizen of the State of Arizona. *See* Ex. B, Pol. Rpt., Pg. 1.

6. Defendant was served with a copy of the citation and petition in the State Court Action on Wednesday, January 16, 2019. As such, this notice of removal is filed within thirty (30) days of receipt of the petition and is timely filed under 28 U.S.C. § 1446(b).

7. No hearings have been scheduled in the State Court Action. A jury trial was requested by the Plaintiff in the State Court Action.

8. The State Court Action is pending within this district and division, as is required for removal by 28 U.S.C. § 1441(a). *See* Ex. A.

9. This Notice of Removal is filed within thirty days of Wednesday, January 16, 2019, the date on which Defendant was served with copies of the citation and petition, which is also the date on which Defendant had notice of its removal grounds: diversity of citizenship jurisdiction.

II. GROUNDS FOR REMOVAL – COMPLETE DIVERSITY OF CITIZENSHIP.

10. The district courts of the United States have original jurisdiction over this action based on diversity of citizenship among the parties, in that Defendant and Hillman are now, and were at the time the State Court Action was commenced, diverse in citizenship from the Plaintiff. Defendant and Hillman are not currently citizens or residents of the State of Texas, nor were they citizens or residents of the State of Texas at the time the State Court Action commenced.

11. Removal of the State Court Action is proper under 28 U.S.C. Section 1441, since it is a civil action brought in a state court. *See* 28 U.S.C. § 1441. The federal district courts have original jurisdiction over the subject matter pursuant to 28 U.S.C. Section 1332 because Defendant, Hillman and Plaintiff are diverse in citizenship. *See* 28 U.S.C. § 1332.

III. GROUNDS FOR REMOVAL – JURISDICTIONAL AMOUNT.

12. Based on the express allegations contained by Part VI (Pg. 6) of Plaintiff's Original Petition, Plaintiff seeks monetary relief over \$200,000.00 (Two Hundred Thousand Dollars). *See* Ex. A, Plt. Orig. Pet., Part VI (Pg. 6). Defendant is entitled to rely on Plaintiff's allegation regarding the monetary amount contained in his Original Petition to establish the jurisdictional requirement of 28 U.S.C. § 1332(a). *See* 28 U.S.C. § 1446(c)(2). Thus, the amount in controversy in this action exceeds, exclusive of interest and costs, the sum of \$75,000 in accordance with 28 U.S.C. § 1332.

IV. OTHER REMOVAL MATTERS.

13. Defendant reserves the right to amend or supplement this Notice of Removal.

14. Pursuant to 28 U.S.C. § 1446(d), Defendant shall give Plaintiff written notice of the filing of this Notice of Removal, and shall file a written notice of this Notice of Removal with the Clerk of the District Court of El Paso County, Texas, 168th Judicial District, attaching a file-

stamped copy of this Notice of Removal.

15. Pursuant to 28 U.S.C. §§ 1332 and 1446, this action is removable to the United States District Court for the Western District of Texas (El Paso Division).

Respectfully submitted,

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Attorneys for Heartland Express, Inc.

CERTIFICATE OF SERVICE

I certify on this 31st day of January of 2019, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties, through their counsel of record, by operation of the Court's CM/ECF electronic filing system. Parties may access this filing through the Court's notice of filing:

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Attorneys for Ruben Plascencia

- ☒ *Via Electronic Service*
- ☐ *Via Facsimile Transmission*
- ☒ *Via E-Mail*
- ☐ *Via Certified Mail, RRR*
- ☐ *Via USPS First Class*
- ☐ *Via Hand Delivery*
- ☐ *Via Commercial Delivery Service*

/s/ Sergio E. Chavez
SERGIO E. CHAVEZ